



University of Kentucky
UKnowledge

Law Faculty Scholarly Articles

Law Faculty Publications

Fall 2013

Justifying Academic Freedom

Brian L. Frye

University of Kentucky College of Law, brianlfrye@uky.edu

Follow this and additional works at: https://uknowledge.uky.edu/law_facpub



Part of the [Legal Education Commons](#)

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Brian L. Frye, *Justifying Academic Freedom*, 9 FIU L. Rev. 45 (2013).

This Response or Comment is brought to you for free and open access by the Law Faculty Publications at UKnowledge. It has been accepted for inclusion in Law Faculty Scholarly Articles by an authorized administrator of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

Justifying Academic Freedom

Notes/Citation Information

FIU Law Review, Vol. 9, No. 1 (Fall 2013), 45-46

Justifying Academic Freedom

Brian L. Frye*

In his “thesis book,” *Versions of Academic Freedom: From Professionalism to Revolution*, Stanley Fish identifies five theories of academic freedom. The professional theory argues that academic freedom gives academics the right to exercise their discretion within academic norms. The common good theory argues that it helps academics contribute to the common good by advancing democratic values. The exceptionalism theory argues that it allows academics to correct popular opinion by expressing their exceptional knowledge. The critique theory argues that it enables academics to question academic norms by protecting dissent. Lastly, the revolution theory argues that it permits academics to reject academic norms in order to advance social justice.

Fish adopts the professional theory of academic freedom on the ground that the purpose of academia is to produce disinterested inquiry, and that academic norms force academics to remain disinterested. He rejects the other theories of academic freedom because they assume that the purpose of academia is something other than disinterested inquiry. According to Fish, the purpose of academia is not to contribute to the common good, correct popular opinion, question academic norms, or advance social justice. Rather, the purpose of academia is to produce scholarship according to academic norms.

On balance, I agree with Fish. The purpose of academia is to produce scholarship. But I fear that he overstates his case by arguing that academia can only be evaluated in relation to academic norms:

[E]ither elevating the task by attaching it to some exalted moral or political imperative or instrumentalizing it by tying its value to an imported set of justifications (it helps the economy, or improves the quality of national life, or fashions the character of civic-minded citizens) brings confusion rather than clarity to the project of understanding and defending academic freedom.¹

In other words, scholarship is an end in itself, rather than a means to an end, and academic freedom is simply the freedom to produce scholarship

* Assistant Professor of Law, University of Kentucky College of Law; J.D., New York University School of Law, 2005; M.F.A., San Francisco Art Institute, 1997; B.A., University of California, Berkeley, 1995.

¹ STANLEY FISH, *VERSIONS OF ACADEMIC FREEDOM: FROM PROFESSIONALISM TO REVOLUTION* (forthcoming 2014) (manuscript at 18) (on file with FIU Law Review).

consistent with academic norms.

Fish cheerfully concedes the circularity of his argument, but insists that “[d]escription and justification *require* circularity if the *raison d’être* of the enterprise is to be honored.”² According to Fish, academic freedom can only be defined by academic norms because social practices cannot be described or justified in extrinsic terms without distortion. For that reason, he rejects the argument that scholarship must “rest on a foundation of objectivity, truth and independent evidence”³ as a normative claim about how academics should evaluate scholarship, rather than as a description of how they actually behave.

While Fish correctly rejects the argument that scholarship must be objective, he does so based on a false premise. Social practices cannot be described in extrinsic terms, but they can be justified by extrinsic terms. For example, tort law cannot adequately be described as a method of improving efficiency, but it can properly be justified on those terms. Indeed, if tort law fails to improve efficiency, we ought to question its justification, or at least its governing norms.

Likewise, while academic freedom can only be described in relation to academic norms, its justification can and should depend on its contribution to the common good. Academics contribute to the common good by producing scholarship. But scholarship is a means to an end, not an end in itself. Academic freedom is justified not only because enables academics to produce more and better scholarship, but also because it enables academics to challenge academic norms that diminish the quantity or quality of scholarship they produce.

² *Id.* (manuscript at 19).

³ *Id.*